



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 171**

**[EPA-HQ-OPP-2011-0049; FRL-9334-4]**

**RIN 2070-AJ77**

### **Synchronizing the Expiration Dates of the Pesticide Applicator Certificate with the Underlying State or Tribal Certificate**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule will reduce burden to restricted use pesticide applicators and simplify federal certification expiration dates. Restricted use pesticides (RUPs) are those which may generally cause unreasonable adverse effects on the environment without additional restrictions. RUPs may only be applied by or under the direct supervision of an applicator certified as competent by a certifying agency. A State, tribe, or Federal agency becomes a certifying agency by receiving approval from EPA on their certification plan. In areas not covered by a certifying agency, EPA may establish a Federal certification plan and issue Federal certificates directly. One way EPA may issue a Federal certificate is based on an existing valid certificate from a certifying agency, and this final rule will synchronize the expiration dates on the Federal certificate with that of the certifying agency certificate on which the Federal certificate is based.

**DATES:** This final rule is effective *[insert date 60 days after date of publication in the Federal Register]*.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2011-0049, is available either electronically through

<http://www.regulations.gov> or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Joe Hogue, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9072; fax number: (703) 308-7070; e-mail address: [hogue.joe@epa.gov](mailto:hogue.joe@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Executive Summary**

#### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are or intend to become a certified applicator under an EPA Federal certification plan. Certified applicators are included in three major industries in the North American Industrial Classification System (NAICS) codes described as crop production, animal production or exterminating, and pest control services. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., individuals that are private certified applicators on farms.

- Animal production (NAICS code 112), e.g., individuals that are private certified applicators on farms.
- Exterminating and pest control services (NAICS code 561710), e.g., individuals that are commercial certified applicators for hire.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected.

*B. What is the Agency's Authority for Taking this Action?*

This final rule is issued pursuant to the authority in sections 11 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136i and w). Section 11 of FIFRA (7 U.S.C. 136i), requires EPA to provide certification plans for applicators of RUPs. Section 25 of FIFRA (7 U.S.C. 136w), authorizes EPA to issue regulations to carry out provisions of FIFRA.

## **II. Background**

Under the provisions of FIFRA section 3(d)(1)(C), EPA shall classify a pesticide for restricted use, if, absent additional regulatory restrictions, the Agency determines that it may generally cause unreasonable adverse effects on the environment. RUPs may be applied only by a certified applicator or under the direct supervision of a certified applicator.

Pesticide applicators can be certified either by a certifying agency (a State, tribe, or non-EPA Federal agency that has an EPA-approved certification plan), or directly by EPA through a Federal certification plan for an area or situation not covered by a certifying agency's plan. Applicators must demonstrate competency to the certifying

agency granting the certificate, according to the requirements of that agency's plan. Currently, all 50 States, some federal agencies, and 4 tribes are certifying agencies (i.e., they implement their EPA-approved certification plans). Applicators certified by a State may apply RUPs in that State, and applicators certified by a tribe may apply RUPs in that tribe's Indian country, without a Federal certificate. However, under 40 CFR 171.11, in areas where there is no EPA-approved certification plan in effect (currently, most of Indian country), EPA may implement a Federal plan, thereby allowing applicators to use RUPs in the area covered by the plan after receiving Federal certification. Under 40 CFR 171.11(e), a Federal plan may include an option that allows applicators to be issued an EPA Federal certificate after submitting to EPA a certification form along with documentation of a valid certificate from a certifying agency, without further demonstration of competency.

Applicator certificates have expiration dates to help ensure that certified applicators maintain their competency. All certifying agencies implement a recertification program for applicators. These programs require certified applicators to continue to meet the competency requirements either through continuing education or examination.

Section 171.11(e) states that an EPA Federal certificate based on a certifying agency's certificate is valid for 2 years for commercial applicators and 3 years for private applicators, or until the expiration date of the original certifying agency certificate, whichever occurs first. The duration of the certification period varies significantly among States, with some currently being shorter and some longer than the Federal certificate maximum of 2 or 3 years.

On June 24, 2011 (76 FR 37045) (FRL-8863-7), EPA published a proposed rule to eliminate the 2 or 3 year maximum for Federal certificates and allow Federal certification to expire at the same time as the underlying certifying agency certificate. The public comment period for the proposed rule closed on August 23, 2011. EPA received one comment, which was from a tribal government agency and supported the proposal. The commenter said that the rule will “eliminate confusion about the different expiration dates and there will be less paperwork.”

### **III. Final Rule**

This action will finalize what was proposed in June 2011. EPA is amending 40 CFR 171.11(e) to synchronize the expiration dates for the EPA Federal certificate with the certifying agency certifications of RUP applicators. This minor revision does not pose any additional requirement or burden and is expected to have a beneficial impact on affected entities, without impacting human health or the environment. EPA will benefit through the reduction of administration of Federal certification plans. Additionally, this rule supersedes the expiration dates described in the Navajo Certification Plan. Further explanation of benefits and the underlying reasons for this revision are explained in the proposed rule associated with this action (June 24, 2011; 76 FR 37045).

### **IV. FIFRA Mandated Reviews**

In accordance with FIFRA section 25(a) and (d), EPA submitted a draft of this final rule to the Committee on Agriculture in the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry in the United States Senate, the United States Department of Agriculture (USDA), and the FIFRA Scientific Advisory Panel (SAP). The SAP and USDA waived review of this final rule.

## V. Statutory and Executive Order Reviews

This action will allow EPA to use the same expiration date for the certification it grants, using the expiration date of the valid certifying agency certification upon which the EPA certification is based. It does not otherwise amend or impose any other requirements. The final rule will not otherwise involve any significant policy or legal issues, and will not increase existing costs. In fact, synchronizing the expiration dates can reduce burden because some applicators will have to complete less paperwork by having a reduced frequency of Federal recertification. As such, EPA is not required to make special considerations or evaluations under the following statutory and Executive Order review requirements.

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act (PRA)*

This action does not impose or change any information collection burden that requires additional review by the Office of Management and Budget (OMB) under the provisions of the PRA (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b). An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the

**Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

The information collection activities contained in the regulations are already approved under OMB control number 2070-0029 (EPA ICR No. 0155.09), and the changes to the expiration date do not change the covered activities such that additional OMB review or approval is required.

*C. Regulatory Flexibility Act (RFA)*

Pursuant to section 605(b) of the RFA (5 U.S.C. 601 *et seq.*), I hereby certify that this final rule does not have a significant economic impact on a substantial number of small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. In making this determination, the impact of concern is any significant adverse economic impact on small entities because the primary purpose of regulatory flexibility analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify under RFA when the rule relieves regulatory burden, or otherwise has no expected economic impact on small entities subject to the rule.

The revision in this final rule will only synchronize the certification expiration dates for restricted use applicators and is not expected to have any adverse economic impacts on affected entities, regardless of their size. It does not otherwise amend or impose any other requirements. As such, this final rule will not have any adverse economic impact on any entities, large or small.

*D. Unfunded Mandates Reform Act (UMRA)*

State, local, and tribal governments are not regulated by this final rule, so it is not expected to affect these governments. Accordingly, pursuant to Title II of UMRA (2 U.S.C. 1531-1538), EPA has determined that this action is not subject to the requirements in sections 202 and 205 of UMRA because it does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any 1 year. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

*E. Executive Order 13132: Federalism*

This action will not have “federalism implications” as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule only affects some applicators of RUPs that are certified under an EPA federal plan by reducing their paperwork burden, and it is not expected to impact human health or the environment or impose any additional burden or



restrictions, or otherwise affect Indian tribes. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks, nor is it an “economically significant regulatory action” as defined by Executive Order 12866.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a “significant regulatory action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve technical standards that would require the consideration of voluntary consensus standards pursuant to section 12(d) of NTTAA (15 U.S.C. 272 note).

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

This action does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Therefore, this

action does not involve special consideration of environmental justice-related issues as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

## **VI. Congressional Review Act**

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 171**

Environmental protection, Indian-lands, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2012.

**James Jones**

*Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 171--[AMENDED]**

1. The authority citation for part 171 continues to read as follows:

**Authority:** 7 U.S.C. 136i and 136w.

2. Section 171.11 is amended by revising paragraph (e) to read as follows:

**§ 171.11 Federal certification of pesticide applicators in States or on Indian Reservations where there is no approved State or Tribal certification plan in effect.**

\* \* \* \* \*

(e) *Recognition of other certificates.* The Administrator may issue a certificate to an individual possessing any other valid Federal, State, or Tribal certificate without further demonstration of competency. The individual shall submit the EPA certification form and written evidence of valid certification to the appropriate EPA Regional Office. The Administrator may deny issuance of such certificate if the standards of competency for each category or subcategory identified in the other Federal, State, or Tribal certificate are not sufficiently comparable to justify waiving further demonstration of competency. The Administrator may revoke, suspend, or modify such certificate if the Federal, State, or Tribal certificate upon which it is based is revoked, suspended, or modified. Unless suspended or revoked, a certificate issued under this paragraph is valid until the expiration date of the Federal, State, or Tribal certificate.

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